

THE SENATE  
TWENTY-SIXTH LEGISLATURE, 2012  
STATE OF HAWAII

S.B. NO. 2511  
S.D. 1

HB 2260 ADJ

## A BILL FOR AN ACT

RELATING TO ENVIRONMENTAL PROTECTION.

### BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that the excessive use of single-use checkout bags presents an unnecessary hazard to the natural environment. Single-use checkout bags:

- (1) Require crude oil, a polluting fossil fuel, for their manufacture;
- (2) Pose serious health risks to legally protected sea turtles and marine mammals;
- (3) Contribute to unsightly litter;
- (4) Burden overcrowded landfills;
- (5) Are recycled minimally;
- (6) Contribute to deforestation and greenhouse gas emissions; and
- (7) Are manufactured using large quantities of water and non-renewable energy.

An environmentally friendly alternative to the single-use checkout bag is the reusable bag which consumers can easily acquire, clean, and store.

The legislature finds that the State has a compelling interest in protecting its precious natural environment. Several countries and both international and domestic cities have successfully implemented

similar laws that have resulted in a significant reduction in single-use checkout bag usage and used the fees for environmental protection programs. Because the people of Hawaii depend on the preservation of the natural environment for economic, social, and cultural reasons, the public's health and welfare will benefit immensely from a significant reduction of single-use checkout bag waste and litter.

The legislature further finds that the improper disposal of bags, particularly plastic bags, pollutes Hawaii's streams and coral reefs and strangles and starves endangered marine animals. Increasing the resilience of these ecosystems to these threats requires litter removal, strengthening water quality measures such as reducing discharge of pollutants in developed areas and controlling erosion caused by deforestation and invasive species, and reducing erosion and sedimentation of reefs. Protecting Hawaii's streams and marine areas from these high-priority threats will help offset the damage caused by ubiquitous single-use checkout bags.

The legislature also finds that production of both paper and plastic single-use checkout bags requires the consumption and combustion of large quantities of fossil fuels, trees, and water. Plastic bags require large amounts of crude oil to produce, and the production of paper bags can use twenty times more fresh water and four times more energy than plastic bags. In the United States alone, over 14 million trees are used to create paper bags, causing significant greenhouse gas emissions and removing forests that absorb large quantities of carbon dioxide. Disposing paper and plastic bags by burning further increases greenhouse gas emissions.

The legislature further finds that protecting Hawaii's forests from damage from invasive species helps to mitigate the climate change

caused by the production and disposal of single-use checkout bags. The intergovernmental panel on climate change considers reducing or preventing deforestation as the climate mitigation option with the largest and most immediate carbon stock impact in the short term.

Forest protection also increases Hawaii's resilience to the likely effects of climate change caused by burning fossil fuels. Major threats of climate change to Hawaii's water supplies are predicted, including drought from higher temperatures, reduced rainfall, and rising sea levels salting coastal freshwater aquifers. Climate change may also result in severe storm events, causing flooding and erosion. Through Act 152, Session Laws of Hawaii 2000, the legislature recognized that fresh water is not an infinite resource and its high quality, quantity, and sustainability depend upon forested watersheds. Hawaii's forests significantly increase water capture and break the impact of heavy rains, reducing flooding and erosion and siltation of reefs and fisheries. Protecting watersheds is crucial for Hawaii's resiliency to climate change by ensuring water availability and buffering severe storm events.

The purpose of this Act is to reduce the adverse impact of single-use checkout bag waste on Hawaii's precious and unique natural environment by establishing an offset fee for the distribution of single-use checkout bags and funding programs to mitigate against damaging effects of single-use checkout bags by improving water quality and resilience to climate change.

SECTION 2. Chapter 342H, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**"PART . SINGLE-USE CHECKOUT BAG FEE**

**§342H-A Definitions.** As used in this part, unless the context otherwise requires:

"Business" means any commercial enterprise or establishment, including sole proprietorships, joint ventures, partnerships, and corporations, or any other legally cognizable entity, whether for profit or not for profit, and includes all employees of the business or any independent contractors associated with the business.

"Mil" means one thousandth of one inch.

"Proprietary information" means business information covered by any of the exceptions to public disclosure under chapter 92F.

"Reusable bag" means a bag with handles that is specifically designed and manufactured for multiple reuse and is made of:

- (1) Cloth or other machine-washable fabric; or
- (2) Durable material suitable for reuse, including plastic that is at least 2.25 mils thick.

"Single-use checkout bag":

- (1) Means a bag made of plastic that is less than 2.25 mils thick, or a paper package or sack, whether recyclable or non-recyclable, that is provided by a business to a customer, and is designed for one-time use to contain and transport merchandise; and
- (2) Does not include:
  - (A) Bags used by customers inside a business to package loose items, such as fruits, vegetables, nuts, grains, or candies, or small hardware items;
  - (B) Bags used to contain or wrap frozen foods, meat or fish, flowers or potted plants, or other items to contain dampness;

- (C) Bags used to protect or transport prepared foods or bakery goods;
- (D) Bags provided by pharmacists to contain prescription medications;
- (E) Newspaper bags for home newspaper delivery;
- (F) Door-hanger bags;
- (G) Laundry, dry cleaning, or garment bags, including bags provided by hotels to guests to contain wet or dirty clothing;
- (H) Bags sold in packages containing multiple bags intended for use as garbage, pet waste, or yard waste bags;
- (I) Bags used to contain live animals, such as fish or insects sold in pet stores; or
- (J) Bags used to transport chemical pesticides, drain-cleaning chemicals, or other caustic chemicals sold at the retail level; provided that this exemption shall be limited to one bag per customer.

"Small business" means a business that has grossed \$500,000 or less in revenues in the previous year.

**§342H-B Distribution of single-use checkout bags; fee. (a)**

Beginning January 1, 2013, all businesses in the State shall charge and collect a fee of 10 cents for each single-use checkout bag that is provided to customers; provided that, if after July 1, 2016, the department determines that the statewide distribution of single-use checkout bags has not decreased by at least seventy-five per cent from the effective date of this Act, then the fee shall automatically increase to 25 cents on January 1, 2017.

(b) Businesses subject to the requirements of this part shall

indicate on each customer transaction receipt the number of single-use checkout bags provided and the amount of the fee charged.

(c) Nothing in this part shall preclude businesses from making reusable bags available for sale to customers.

(d) Of the fees collected pursuant to subsection (a), a business may retain:

(1) Up to twenty per cent from January 1, 2013, through December 31, 2013; and

(2) Up to ten per cent from January 1, 2014, and thereafter; provided that all fees retained shall be subject to chapters 235 and 237; provided further that any taxes imposed on the fees retained shall not be charged to any consumer.

(e) Businesses subject to the requirements of this part shall conduct educational outreach to their customers regarding the single-use checkout bag fee program.

**§342H-C Remittance of fees.** (a) No later than the last day of each month, each business subject to the requirements of this part shall remit to the department the fees collected pursuant to section 342H-B(a), less the amount retained pursuant to section 342H-B(d), during the immediately preceding month; provided that a small business may remit the fees on a quarterly basis on the last day of the month following the end of a quarter.

(b) Payments and receipts of fees shall be reported on forms prescribed by the director. Any proprietary information obtained by the department shall be kept confidential and shall not be disclosed to any other person.

(c) Businesses shall be subject to penalties and interest for late or underpaid fees.

(d) The department shall deposit all fees collected under this part into a special account in the environmental management special fund established by section 342G-63; provided that of the fees deposited:

- (1) The first \$800,000 per year shall be expended by the department for administrative, education, audit, compliance, and enforcement activities associated with collection of the single-use checkout bag fee; and
- (2) Any remaining balance shall be distributed as follows:
  - (A) Twenty per cent shall be deposited into the environmental response revolving fund established under section 128D-2, to be expended by the department; and
  - (B) Eighty per cent shall be deposited into the natural area reserve fund established under section 195-9, to be expended by the department of land and natural resources for watershed protection, restoration, and acquisition.

**§342H-D Violations.** (a) It shall be a violation of this part for any business that is subject to the requirements of this part to pay or otherwise reimburse a customer for any portion of the fee required to be charged and collected pursuant to section 342H-B.

(b) Violations of this part or any rule adopted pursuant to this part shall be subject to a fine of not less than \$1,000 for each violation.

**§342H-E Injunctive and other relief.** The director may institute a civil action in any court of competent jurisdiction for injunctive and other relief to correct or abate violation of this part or any rule adopted pursuant to this part, to collect administrative

penalties, or to obtain other relief.

**§342H-F County ordinances.** (a) Nothing in this part shall be construed to preempt or in any manner affect a county ordinance prohibiting or restricting single-use checkout bags; provided that the fee established under section 342H-B shall be applicable to single-use checkout bags that are not prohibited or restricted by a county ordinance.

(b) Nothing in this part shall prohibit a county from enacting ordinances that are more stringent in the control or prohibition of single-use checkout bags than this part.

**§342H-G Business reporting.** By March 31 of each year, all businesses that are required to charge and collect the single-use checkout bag fee pursuant to section 342H-B shall submit to the department, on forms prescribed by the department, an annual report for the previous calendar year containing the following information:

- (1) The number of single-use checkout bags provided to customers; and
- (2) The number of reusable bags provided to customers.

**§342H-H Audit authority.** The records of each business subject to this part shall be made available, upon request, for inspection by the department or a duly authorized agent of the department. Any proprietary information obtained by the department or its duly authorized agent shall be kept confidential and shall not be disclosed to any other person, except:

- (1) As may be reasonably required in an administrative or judicial proceeding to enforce any provision of this part or any rule adopted pursuant to this part; or
- (2) Under an order issued by a court or administrative agency



hearings officer.

**§342H-I Rules.** The director shall adopt rules, pursuant to chapter 91, as may be necessary for the purposes of this part.

**§342H-J Annual report.** The department shall submit to the legislature an annual report, no later than twenty days prior to the convening of each regular session, which shall include the department's efforts to effectuate this chapter, the number of single-use bags distributed, the statewide reduction rate in the amount of single-use bags distributed, and any recommended policy changes needed to better effectuate the purpose of this part."

SECTION 3. Section 342G-63, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The department shall expend moneys contained in the environmental management special fund to:

- (1) Partially fund the operating costs of the program including its regulatory functions and the development of waste reduction and diversion activities as mandated by chapter 342G;
- (2) Fund statewide education, demonstration, and market development programs, through direct contract or direct transfer of funds to the counties and the department of business, economic development, and tourism, or under a grant program that may be developed under rules pursuant to chapter 91; ~~and~~
- (3) Provide for annual training for municipal solid waste operators in compliance with 40 Code of Federal Regulations Part 258 and chapter 11-58, Hawaii Administrative Rules~~[-]~~;
- (4) Fund administrative, audit, compliance, and enforcement

activities associated with the single-use checkout bag fee established by part      , chapter 342H; and

- (5) Fund educational outreach regarding the single-use checkout bag fee program established by part      , chapter 342H."

SECTION 4. No later than March 31, 2013, each business, as defined in section 2 of this Act, that is required to charge and collect the single-use checkout bag fee pursuant to this Act shall submit to the department of health a one-time report listing the number of single-use checkout bags and reusable bags provided to customers by that business for the 2012 calendar year.

SECTION 5. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 6. Nothing in this Act shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

SECTION 7. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 9. The revisor of statutes shall insert the effective date of this Act in the appropriate place in section 2 of this Act.

SECTION 10. This Act shall take effect on July 1, 2012.

**Report Title:**

Environmental Protection; Single-use Checkout Bags; Fee

**Description:**

Requires businesses in the State to collect a fee for single-use checkout bags provided to a customer. Allows businesses to keep twenty per cent of the fees for the first year of the program and ten per cent of the fees thereafter, subject to income and general excises taxes. Requires fees to be collected on single-use checkout bags not prohibited by county ordinance. Deposits all fees into a special account in the environmental management special fund. Requires first \$800,000 of all fees collected to be expended by DOH for costs relating to administrative, education, audit, compliance, and enforcement activities associated with the fee. Requires any remaining fees collected to be deposited in the environmental response revolving fund and the natural area reserve fund. Requires reports to the legislature. (SD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

